

**REGULAR STATE BANKING BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

September 13, 2007

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:00 a.m., Thursday, September 13, 2007, by conference call.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Ron Braseth, Member (*Mayville*)
Launa Moldenhauer, Member (*Bismarck*)
Roger Monson, Member (*Finley*)
Anita Quale, Member (*Watford City*)

MEMBERS ABSENT: Bill Daniel, Member
Loren Henke, Member

ALSO PRESENT: Robert J. Entringer, Secretary (*Office*)
Douglas D. Grenz, Chief Examiner – Banks (*Office*)
Aaron Webb, Assistant Attorney General (*Office*)
Mary Johnson (*Fargo*)

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on July 12, 2007, and the special meeting held on July 31, 2007.

It was moved by Member Moldenhauer, seconded by Member Braseth, and carried by a vote of 5 to 0, with Members Daniel and Henke absent, to approve the July 12, 2007, and July 31, 2007, minutes.

APPLICATION BY UNION STATE BANK OF FARGO, FARGO, TO DISCONTINUE ITS FACILITY AT 1100 13TH AVENUE EAST, WEST FARGO

Assistant Commissioner Entringer indicated the Board members should have received a copy of the letter from President Johnson indicating the reasons for the request to close the facility, as well as a proposed Order. The notice of intent to discontinue the facility was published on August 6 and 13, 2007, and directed comments to the Department as well as the bank. Assistant Commissioner Entringer noted no comments were received by the Department, and President Johnson indicated the bank did not receive any comments either.

Assistant Commissioner Entringer indicated there is no statutory guidance for a basis to deny a request to cancel a permit for a facility, adding that the only time the Board has tabled a request to cancel a permit is when a bank requested to cancel a permit in a fairly small community and the community objected rather strenuously. Assistant Commissioner Entringer indicated the Department has no objection to the request to cancel this permit.

President Johnson indicated she would reiterate one point in her letter which is when the bank opened in that location there were only three banks in West Fargo and, as you all know, West Fargo is the fastest growing city in the State of North Dakota; noting that the bank's competitors also opened in the area which increased Union State Bank of Fargo's competition rather quickly. President Johnson added the bank decided strategically at that time it would move its main bank further south and west, and when the main bank relocation took place on 17th Avenue and 45th Street it made the West Fargo branch unnecessary.

It was moved by Member Braseth and seconded by Member Quale to approve the request by Union State Bank of Fargo, Fargo, to discontinue its facility located at 1100 13th Avenue East, West Fargo, and to authorize Chairman Karsky to sign the Order on behalf of the Board. The motion carried by a vote of 5 to 0, with Members Daniel and Henke absent.

President Johnson left the meeting at 9:06 a.m.

APPROVAL OF CORPORATE DOCUMENT CHANGE FOR WESTERN STATE BANK, DEVILS LAKE

Chairman Karsky indicated the Board should have a copy of the Statement of Correction, the Corrected Plan of Reorganization and Merger Agreement, and Restated Articles of Incorporation regarding Western State Bank, Devils Lake.

Assistant Commissioner Entringer indicated this issue goes back to 1997 when the Board had a request from Western State Bank, Devils Lake, and the State Bank of Towner, Towner, to merge. The applicant requested at that time to transact the merger by merging the Devils Lake bank into the Towner bank; however, under the charter and name of Western State Bank. At the time of this application the Department requested an Opinion from its Assistant Attorney General as to whether the bank could separate the charter from its corporate structure, and the Assistant Attorney General stated there was nothing in the statute that limits the corporation and the charter to be the same institution in a merger transaction. The Assistant Attorney General concluded that the proposed transaction was a legal transaction.

Assistant Commissioner Entringer stated the minutes from the Board meeting indicate that after the merger Western State Agency (the holding company) would own 100% of State Bank of Towner, which would be operating under the charter and name of Western State Bank. Assistant Commissioner Entringer explained the rationale was that Western State Agency owned 100% of the Towner bank, but did not own 100% of the Devils Lake bank, so essentially they wanted the surviving charter to be the Devils Lake charter but the surviving corporate structure to be that of the Towner bank. Assistant Commissioner Entringer indicated this is how the merger was approved; however, the problem arises when the internal records of our office were changed and we track the 25 year corporate existence, and the expiration that was used for our records was for the Devils Lake bank, while the Secretary of State's Office used the corporate existence date for the Towner bank.

Assistant Commissioner Entringer indicated when the Board acted on the Articles of Amendment for Western State Bank in May 2007 to change the corporate existence to perpetual, it was submitted to the Secretary of State's Office, and that is when they notified our office that the corporate existence had expired. Assistant Commissioner Entringer stated the entire transaction was reviewed and discovered the problem was that our office used the corporate existence date of

Devils Lake and the Secretary of State's Office used the corporate existence date for Towner.

Assistant Commissioner Entringer stated fortunately there is a statute under the North Dakota Business Corporation's Act which allows for a correction in previously filed Articles and merger documents, and this is what is before the Board today, to approve the Statement of Correction, the Corrected Plan of Reorganization and Merger Agreement, and the Restated Articles of Incorporation.

Assistant Commissioner Entringer referred to the Corrected Plan of Reorganization and Merger Agreement, and pointed out that the change that was made – "Devils Lake bank shall be merged into the Towner bank and Towner bank will be the surviving corporation and its charter will be restated essentially like that of the Devils Lake bank with the exception of authorized shares."

Member Quale asked if the charter was restated and renamed, and Assistant Commissioner Entringer stated that is correct.

Assistant Commissioner Entringer explained if the Board approves these corrections the Amended Corporate Existence will then be October 1, 2007, at which point the Secretary of State's Office would file the Amendment to the Articles of Incorporation which the Board approved in May which extended the corporate existence to perpetual. Assistant Commissioner Entringer indicated after this is complete the Department will send out a letter to all banks that do not have perpetual existence asking that they file the Articles of Amendment to take care of this so the Department no longer has to track corporate existence expirations.

It was moved by Member Monson and seconded by Member Moldenhauer to approve the Statement of Correction, Corrected Plan of Reorganization and Merger Agreement, and Restated Articles of Incorporation for Western State Bank, Devils Lake. The motion carried by a vote of 5 to 0, with Members Daniel and Henke absent.

The Board went into closed session at 9:16 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary